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8 UNITED STATES DISTRICT COURT  
9 SOUTHERN DISTRICT OF CALIFORNIA  
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11 ROBERT DOUGLAS,

12 Plaintiff,

13 v.  
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15 MICHAEL SMELOSKY, Warden, et  
16 al.,

17 Defendants.  
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Case No. 3:10-cv-1464-GPC-BGS

**ORDER:**

**(1) ADOPTING REPORT AND  
RECOMMENDATION, (ECF NO.  
70);**

**(2) DENYING IN PART AND  
GRANTING IN PART MOTION  
FOR SUMMARY JUDGMENT,  
(ECF NO. 66);**

**(3) RESETTling PRETRIAL  
DATES AND DEADLINES**

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20 On August 6, 2012, Plaintiff filed a complaint pursuant to 42 U.S.C. § 1983,  
21 alleging Defendants violated Plaintiff's Eighth Amendment right to be free from cruel  
22 and unusual punishment when Plaintiff was forced to stand bare-chested against a hot  
23 wall and then locked in a hot, unventilated van. (ECF No. 1.) The case was assigned  
24 to Magistrate Judge Skomal for disposition on report and recommendation.

25 Only Plaintiff's claim against defendant Valenzuela in his individual capacity  
26 remains. (See ECF No. 18.) On January 30, 2014, Valenzuela filed a motion for  
27 summary judgment, (ECF No. 66), which Plaintiff opposed on March 28, 2014, (ECF  
28 No. 69).

1 On June 19, 2014, Magistrate Judge Skomal issued a report and recommendation  
2 (“Report”), recommending that Valenzuela’s Motion for Summary Judgment be denied  
3 in part and granted in part—denied as to Plaintiff’s claim that he was locked in a hot,  
4 unventilated van and granted as to Plaintiff’s claim that he was forced to stand bare-  
5 chested against a hot wall. (ECF No. 70.) Magistrate Judge Skomal set a deadline of  
6 July 7, 2014, to file any objections to the Report. To date, the Court has received no  
7 objections to the Report.

8 A district judge’s role in reviewing a magistrate judge’s report and  
9 recommendation is set forth in 28 U.S.C. § 636(b)(1). Under this statute, a district  
10 judge “shall make a de novo determination of those portions of the report . . . to which  
11 objection is made,” and “may accept, reject, or modify, in whole or in part, the findings  
12 or recommendations made by the magistrate [judge].” When no objections are filed,  
13 the Court may assume the correctness of the magistrate judge’s findings of fact and  
14 decide the motion on the applicable law. Campbell v. United States Dist. Ct., 501 F.2d  
15 196, 206 (9th Cir. 1974); Johnson v. Nelson, 142 F. Supp. 2d 1215, 1217 (S.D. Cal.  
16 2001). Under such circumstances, the Ninth Circuit has held that “a failure to file  
17 objections only relieves the trial court of its burden to give de novo review to factual  
18 findings; conclusions of law must still be reviewed de novo.” Barilla v. Ervin, 886  
19 F.2d 1514, 1518 (9th Cir. 1989) (citing Britt v. Simi Valley Unified Sch. Dist., 708  
20 F.2d 452, 454 (9th Cir. 1983)).

21 Because no objections to the Report have been filed, the Court assumes the  
22 correctness of Magistrate Judge Skomal’s factual findings and adopts them in full. The  
23 Court has conducted a de novo review of Magistrate Judge Skomal’s legal conclusions  
24 and finds the Report provides a cogent analysis of Valenzuela’s Motion for Summary  
25 Judgment.

26 Accordingly, **IT IS HEREBY ORDERED** that:

- 27 1. The Report, (ECF No. 70), is **ADOPTED** in its entirety.
- 28 2. Valenzuela’s Motion for Summary Judgment, (ECF No. 66), is **DENIED**

**IN PART and GRANTED IN PART.**


3. Magistrate Judge Skomal is directed to set a **mandatory settlement conference** at the earliest opportunity.
4. All parties or their counsel shall also fully comply with the pretrial disclosure requirements of Federal Rule of Civil Procedure 26(a)(3) on or before **September 19, 2014**. **Failure to comply with these disclosures requirements could result in evidence preclusion or other sanctions under Federal Rule of Civil Procedure 37;**
5. The parties or their counsel shall meet together and take the action required by Local Rule 16.1(f)(4) on or before **September 26, 2014**. At this meeting, the parties or their counsel shall discuss and attempt to enter into stipulations and agreements resulting in simplification of the triable issues. The parties or their counsel shall exchange copies and/or display all exhibits other than those to be used for impeachment. The exhibits shall be prepared in accordance with Local Rule 16.1(f)(4)(c). The parties or their counsel shall note any objections they have to any other party's pretrial disclosures under Fed. R. Civ. P. 26(a)(3). The parties and their counsel shall cooperate in the preparation of the proposed pretrial conference order. Counsel for Defendants shall have the duty of arranging these meetings.
6. Counsel for Defendants shall be responsible for arranging the meetings and preparing the proposed pretrial order required by Local Rule 16.1(f)(6). On or before **October 3, 2014**, defense counsel must provide Plaintiff or his counsel with the proposed pretrial order for review and approval. Plaintiff or his counsel must communicate promptly with defense counsel concerning any objections to form or content of the proposed order, and both parties shall attempt to promptly resolve their differences, if any, concerning the proposed order.

1           7.     The proposed pretrial order, including objections to any other party's  
2                 Federal Rule 26(a)(3) pretrial disclosures shall be prepared, served, and  
3                 lodged with the undersigned's chambers on or before **October 10, 2014**,  
4                 and shall be in the form prescribed in, and comply with, Local  
5                 Rule 16.1(f)(6).

6           8.     The final pretrial conference shall be held before the undersigned on  
7                 **October 17, 2014, at 1:30 p.m.** Defense counsel shall be responsible for  
8                 coordinating Plaintiff's telephonic appearance at the final pretrial  
9                 conference.

10          9.     Dates for motions in limine and trial will be set at the final pretrial  
11                 conference.

12   DATED: July 15, 2014

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14                                 HON. GONZALO P. CURIEL  
15                                 United States District Judge  
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